



INDEX

	Page
Opinion below.....	1
Jurisdiction.....	1
Question presented.....	1
Statutes and regulations involved.....	2
Statement.....	4
Argument.....	6
Conclusion.....	10
Appendix.....	11

CITATIONS

Cases:

<i>Bull v. United States</i> , 295 U. S. 247.....	9
<i>Carriso, Inc. v. United States</i> , 106 F. (2d) 707.....	9
<i>Cook v. United States</i> , 115 F. (2d) 463.....	8
<i>Finney v. Guy</i> , 189 U. S. 335.....	9
<i>Merritt v. United States</i> , 267 U. S. 338.....	9
<i>Mulford v. Smith</i> , 307 U. S. 38.....	5
<i>Nortz v. United States</i> , 294 U. S. 317.....	9
<i>Pennie v. Reis</i> , 132 U. S. 464.....	9
<i>St. Louis, Etc., Railroad v. United States</i> , 267 U. S. 346.....	9
<i>Sinclair Nav. Co. v. United States</i> , 32 F. (2d) 90.....	9
<i>Stahmann v. Vidal</i> , 305 U. S. 61.....	6, 10
<i>Thompson v. Deal</i> , 92 F. (2d) 478.....	6, 10
<i>United States v. Algoma Lumber Co.</i> , 305 U. S. 415.....	9
<i>United States v. Ames</i> , 99 U. S. 35.....	9
<i>United States v. Butler</i> , 297 U. S. 1.....	6
<i>United States v. Compagnie Generale Transatlantique</i> , 26 F. (2d) 195.....	9
<i>United States v. Darby</i> , 312 U. S. 100.....	5
<i>United States v. Minnesota Investment Co.</i> , 271 U. S. 212.....	9
<i>United States v. Moor</i> , 93 F. (2d) 422.....	6

Statutes:

<i>Bankhead Cotton Act of 1934</i> , c. 157, 48 Stat. 598:	
Sec. 3.....	13
Sec. 4.....	13
Sec. 9.....	14
Sec. 10.....	15
Sec. 14.....	15
Sec. 15.....	16
Sec. 19.....	16

II

Statutes—Continued.

	Page
Second Deficiency Appropriation Act, 1938, c. 681, 52	
Stat. 1114.....	11
Judicial Code:	
Sec. 145 (1).....	11
Sec. 156 (28 U. S. C. § 262).....	4

Miscellaneous:

Department of Agriculture Regulations B. A. 19C prescribed under the Cotton Act of April 21, 1934:

Art. X, Sec. 102.....	3, 16
Art. X, Sec. 103.....	3, 16
Art. X, Sec. 104.....	3, 16-19

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 199

J. H. CRAIN AND R. E. LEE WILSON, JR., TRUSTEES
OF LEE WILSON & COMPANY, A BUSINESS TRUST,
PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT
OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court below (R. 6-17) is reported in 44 F. Supp. 321.

JURISDICTION

The judgment of the Court of Claims was entered April 6, 1942 (R. 17). The petition for a writ of certiorari was filed July 2, 1942. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTION PRESENTED

Whether a producer and ginner of cotton who purchased tax exemption certificates from a pool established by the Secretary of Agriculture and thereafter surrendered the certificates to the Collector of Internal Revenue in lieu of payment of the ginning tax can recover from the United States the amount paid for the certificates.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Act of April 24, 1934, c. 157, 48 Stat. 598, known as the Bankhead Cotton Act, and of the other statutes involved are set forth in the Appendix, *infra*, pp. 11-16. The Bankhead Cotton Act was repealed February 10, 1936 (c. 42, 49 Stat. 1106). Its provisions may be summarized as follows for purposes of this case:

The Act imposed a tax of not less than five cents per pound of lint cotton upon the ginning of cotton harvested during a crop year in excess of a quota allotted to each producer by the Secretary of Agriculture pursuant to the Act (Section 4). Upon payment of the tax or, in the alternative, upon surrender of tax exemption certificates, the producer could obtain bale tags from the Collector of Internal Revenue (Section 10 (a)). With certain exceptions, no person could transport, sell, or purchase any bale of lint cotton not having a bale tag affixed to it (Section 14). If a producer stored his cotton as permitted by regulations of the Sec-

retary, no tax or exemption certificate would be collected until such time as he chose to secure bale tags (Section 4 (f)).

The maximum total of allotted quotas for the crop year 1934-1935 was declared to be ten million bales (Section 3 (e)). Upon application the Secretary of Agriculture was empowered to issue exemption certificates covering up to that amount (Section 9 (a)). All such certificates were transferable in such manner as the Secretary might prescribe and in such form as he might prescribe to facilitate transfer of them (Section 9 (d)).

The Secretary issued regulations (Appendix, *infra*, pp. 17-20) under which producers having exemption certificates in amounts greater than were needed to obtain bale tags for their cotton might sell or assign their surplus certificates to other producers (Art. X, Secs. 102, 103). In addition, by executing certain trust agreements producers were permitted to transfer their surplus exemption certificates to a national pool which was created by the regulations and operated under governmental supervision (Art. X, Sec. 104 (a) (c)). The exemption certificates which were transferred to the pool were to be cancelled, but the manager of the pool could then sell to other producers a like amount of exemption certificates issued by the Secretary for such purposes. Subject to change by the Secretary the selling price was at the rate of four cents per pound of cotton

covered by the certificates sold (Art. X, Sec. 104 (e)). Payments were to be made to the pool manager and were to be deposited with the Treasurer of the United States under a special symbol number (Art. X, Sec. 104 (e) (3), (g)). The funds remaining in the pool after deduction of expenses were required to be distributed pro rata to the producers who had surrendered surplus certificates to the pool under the trust agreements (Art. X, Sec. 104 (h)).

STATEMENT

Petitioners are the trustees of Lee Wilson & Company, a common-law business trust engaged since prior to 1934 in the production, ginning and sale of cotton (R. 1). On November 12, 1940, they brought this suit against the United States under Section 145 (1) of the Judicial Code (Appendix, *infra*, p. 11) to recover \$65,923.32 with interest (R. 1-5). This sum, exclusive of interest, represented the amount of so-called surplus cotton tax exemption certificates alleged to have been bought by petitioners on various dates between October 23, 1934, and February 9, 1935, for the use of the trust in meeting the requirements of the Bankhead Cotton Act.¹ Petitioners alleged that the Act was

¹ With the exception of the certificates bought on October 23, 1934, for \$1,000.00, all of the alleged purchases were made within six years of the filing of the present suit, which is the statutory period of limitation. Section 156 of the Judicial Code (28 U. S. C. § 262).

unconstitutional and that their payments for the certificates had been made under duress and been collected by the United States unlawfully (R. 2-4). The case was heard upon a demurrer filed by the United States (R. 5). The Court of Claims sustained the demurrer and dismissed the petition (R. 17).

The petition alleged the following facts:

Petitioners bought the exemption certificates from E. L. Deal, the manager of a pool established for the purpose of selling such certificates. Petitioners paid for the certificates by checks payable to Deal. He endorsed the checks over to the United States and they were covered into the general fund of the Treasury. Petitioners presented the certificates to the Collector of Internal Revenue in payment of the ginning tax on the cotton which was subject thereto. The Collector received the certificates as payment in full of the tax and issued bale tags for the cotton (R. 2). Thereafter, on November 30, 1938, and again on June 26, 1939, petitioners filed claims for refund with the Collector, demanding refund of the amount paid for the certificates. These claims were rejected by the Commissioner of Internal Revenue on May 23, 1939, and August 21, 1939, respectively. Petitioners later made demand upon the Comptroller General of the United States, the Secretary of the Treasury, and the Secretary of Agriculture for refund of the amounts paid for these certificates but no refund was ever made (R. 3).

The Court of Claims, in sustaining the demurrer, indicated that in view of the decisions in *Mulford v. Smith*, 307 U. S. 38, and *United States v. Darby*, 312 U. S. 100, it did not think petitioners were warranted in assuming, without more fully showing, that the Bankhead Cotton Act was unconstitutional (R. 8-9). It held that whether or not the Act was valid petitioners were not entitled to recover since they had paid no tax to the United States (R. 9-15). Judge Madden concurred on the ground that no showing had been made sufficient to overcome the presumption that the Act was constitutional and that, therefore, it was unnecessary to decide whether petitioners might recover if the Act was invalid (R. 16). Judge Whitaker dissented (R. 16-17).

ARGUMENT

1. On the assumption that the Court of Claims held that the Bankhead Cotton Act was constitutional, petitioners assert (Pet. 5-7) a conflict with the decisions in *Thompson v. Deal*, 92 F. (2d) 478 (App. D. C.), and *United States v. Moor*, 93 F. (2d) 422 (C. C. A. 5).² However, it is clear from

² Petitioners also assert (Pet. 6) conflicts with *United States v. Butler*, 297 U. S. 1, and *Stahmann v. Vidal*, 305 U. S. 61. Only the second of these cases involved the Bankhead Cotton Act and the question of constitutionality was not before the Court or decided by it, certiorari having been limited to the question whether the petitioners, who were producers and not ginners, were the proper parties to sue the collector of internal revenue to recover taxes paid in money.

the opinion that the court did not determine the question of constitutionality. The court stated specifically that it was unnecessary to hinge its decision on the "uncertainty" with respect to constitutionality (R. 9) and proceeded to hold that petitioners could not recover even if the Act was invalid (R. 9-15).

If the court had sustained the validity of the Act, there nevertheless would be no sufficient reason to review the question since such a review would be unnecessary to affirmance of the judgment and since the Act has been repealed (*supra*, p. 2). Moreover, the decisions relied on by petitioners as presenting a conflict antedate the decision of this Court in *Mulford v. Smith*, *supra*, which upheld a statute similar to the Bankhead Cotton Act.

2. The holding that petitioners could not recover from the United States whether or not the Act was valid is correct and not in conflict with the decision of any other court.

The Second Deficiency Appropriation Act of 1938 (Appendix, *infra*, pp. 11-12) authorized, and appropriated sums for, the refunding of all amounts collected as tax under the Bankhead Cotton Act and two other statutes. However, it provided that the Commissioner's determinations of claims for refund should be final in the absence of fraud and that "no refund of any tax shall be made under this paragraph unless liability for the payment of such tax was satisfied by the payment of money."

From these provisions it is plain that petitioners could not recover under that statute, the Commissioner having rejected their claims for refund and their tax liability having been satisfied, not by the payment of money, but by the surrender of exemption certificates to the collector. *Cook v. United States*, 115 F. (2d) 463 (C. C. A. 5). Indeed, it is arguable that these specific provisions should be construed also as limiting any right otherwise existing to recover under the Tucker Act (28 U. S. C. § 41(20)) or under the similar general provisions of Section 145 of the Judicial Code. This construction was adopted in the *Cook* case where the Tucker Act was invoked, but was rejected by the Court of Claims in the instant case (R. 10).

Assuming that the Second Deficiency Appropriation Act is not a limitation upon suits brought under Section 145, it is none the less clear that petitioners may not recover. Their checks to Deal as manager of the pool were payments for exemption certificates which they had elected to buy for use in lieu of paying taxes and, although the petition alleges that their checks were covered into the general fund of the Treasury, it is apparent as a matter of law under the controlling regulations quoted in the Appendix (*infra*, pp. 17-20) and hereinbefore summarized (*supra*, p. 3), that the United States received the payments as trustee and, after deducting expenses, was obligated to distribute them pro rata to the producers who had surren-

dered certificates to the pool.³ The United States, therefore, is no more obligated to petitioners than it is to producers who, instead of buying certificates from the pool, bought them directly from other producers as permitted by the regulations. In neither case may any contract on the part of the United States to reimburse the producers be implied in fact; and a contract implied in law, if one existed, would be an insufficient basis for recovery under Section 145 or the Tucker Act. *United States v. Algoma Lumber Co.*, 305 U. S. 415; *Merritt v. United States*, 267 U. S. 338; *United States v. Minnesota Investment Co.*, 271 U. S. 212.

In the cases which are asserted (Pet. 7-8) to conflict in principle with the holding of the Court of Claims that the United States is not obligated to petitioners, the United States wrongfully exacted fines or taxes which it held for its own benefit.⁴

³ Petitioners complain (Pet. 8-9) that the Court of Claims failed to give effect to the allegation that their checks were covered into the general fund of the Treasury. Conceding that the demurrer admitted the allegation, it did not admit any legal consequence of the fact alleged and the regulations are conclusive that the United States received the money only as trustee. *Nortz v. United States*, 294 U. S. 317, 324-325; *United States v. Ames*, 99 U. S. 35; *Finney v. Guy*, 189 U. S. 335; *St. Louis, Etc., Railroad v. United States*, 267 U. S. 346, 349; *Pennie v. Reis*, 132 U. S. 464, 470.

⁴ *United States v. Compagnie Generale Transatlantique*, 26 F. (2d) 195 (C. C. A. 2); *Sinclair Nav. Co. v. United States*, 32 F. (2d) 90 (C. C. A. 5); *Carriso, Inc., v. United States*, 106 F. (2d) 707 (C. C. A. 9); *Bull v. United States*, 295 U. S. 247.

The amounts here involved it received and held only as trustee.

The other alleged conflicts of decision likewise afford no reason for certiorari. The Court of Claims expressed (R. 14) the view that petitioners did not pay the amounts involved under duress. But since this conclusion was not necessary to the decision, the alleged conflicts with *Thompson v. Deal*, 92 F. (2d) 478 (App. D. C.), and *Stahman v. Vidal*, 305 U. S. 61, do not call for review. The latter case, moreover, did not involve payments for tax exemption certificates (see footnote 2, *supra*, p. 6), and in *Thompson v. Deal*, which was a suit against the pool manager and others, the court held that the United States had no pecuniary interest in the payments and, therefore, that the suit was not one against it.

CONCLUSION

For the reasons stated the petition should be denied.

Respectfully submitted.

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AUGUST 1942.

